

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 15-2666 (JNE/FLN)

This Document Relates:

PLAINTIFFS

16-cv-01895 (*Eney v. 3M Co., et al.*)
16-cv-03934 (*Hougen v. 3M Co., et al.*)
17-cv-02450 (*Knapke v. 3M Co., et al.*)
17-cv-02453 (*Hughes v. 3M Co., et al.*)
17-cv-02455 (*Nugent v. 3M Co., et al.*)
18-cv-00104 (*Blevins v. 3M Co., et al.*)
17-cv-04859 (*Bradford v. 3M Co., et al.*)
17-cv-04860 (*Mack, v. 3M Co., et al.*)
18-cv-00347 (*Watson v. 3M Co., et al.*)
17-cv-00349 (*Baxter v. 3M Co., et al.*)
17-cv-03997 (*Keith v. 3M Co., et al.*)
18-cv-00167 (*Shoaf v. 3M Co., et al.*)

**THE MILLER FIRM, LLC'S SUPPLEMENTAL RESPONSE IN OPPOSITION
TO DEFENDANTS' MOTION TO SHOW CAUSE**

NOW COMES the above captioned Plaintiffs represented by the Miller Firm, LLC, identified in Defendants' Motion for Order to Show Cause Why Cases Should Not be Dismissed for Lack of Product Identification or Product-Related Injury [Dkt. 1380], and by and through undersigned counsel submits this Supplemental Response to Defendants' Motion for the 12 cases represented by the Miller Firm, LLC. This response is supplemental and incorporates the arguments therein of the Response to be filed by the Plaintiff Steering Committee ("PSC").

Defense counsel identified the 12 above captioned cases represented by the Miller Firm, LLC as “Group 1 cases” to which they allege no reasonable inquiry was made in discovery of product identification prior commencing the litigation. Defendants seek the issuance of a show cause order. It appears Defendants’ contention is solely based on Plaintiff Fact Sheet (“PFS”) responses reflecting that declarant Plaintiff had no information related to the Bair Hugger device. Plaintiff counsel interpreted the PFS inquiry as related to declarant Plaintiff’s first-hand knowledge of Bair Hugger usage such as patient handouts, etc. and “No” was marked in cases for which declarant Plaintiff had no independent knowledge of the Bair Hugger usage outside of medical records obtained by counsel. For all twelve cases for which “No” was marked in the PFS, Plaintiff concurrently produced responsive medical records in compliance with PTO 14 and such records either specifically identified use of the Bair Hugger Device or use of a forced air warming device. See Shah Declaration at 3.

Counsel for the Miller Firm did not receive notice of Defendants’ intent to file the instant Motion until circulation by the PSC on 7/27/2018. Plaintiff promptly responded to Defendants on 7/31/2018 sending an email specifically attaching the medical records where the Bair Hugger is identified in Eney, Hougen, Knapke, Nugent, Blevins, Bradford, Mack, and Watson and where the forced air warming device is identified in Baxter, Hughes, Keith, and Shoaf. See Shah Dec. Ex. A. All such records were readily available to Defendants in conjunction with the PFS productions and were produced to them in compliance with PTO 14. However, Defendant failed to review such records and continue to burden the Court with the instant Motion in spite of specifically being provided the relevant product identifications.

Defense has made no showing that Plaintiffs have failed to meet their rule 11 obligations. In fact, Plaintiffs have diligently investigated their claims as evidenced by the extensive medical record productions that accompanied the PFS production. In light of the foregoing, the undersigned counsel respectfully seeks that Defendants' Motion be denied for above captioned Miller Firm Plaintiffs.

Dated: 8/6/2018

Respectfully submitted,

s/Tayjes Shah

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CERTIFICATE OF SERVICE

This is to certify that on August 6, 2018 a copy of the foregoing document was served on all parties via the Court's electronic filing system.

Respectfully submitted,

s/Tayjes Shah

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